



Match-E-Be-Nash-She-Wish
Band of Pottawatomí Indians
GUN LAKE TRIBE

David K. Sprague
Tribal Chairman

Federally Acknowledged
August 23, 1999

Service Area: Allegan, Barry,
Kalamazoo, Kent, and
Ottawa Counties

VIA FACSIMILE
202-273-3153

To: Ms. Paula Hart
Acting Director, Office of Indian Gaming
Office of the Deputy Assistant Secretary—Policy and Economic Development
1849 C St., NW
Mailstop 3657-MIB
Washington, D.C. 20240

Re: RIN 1076-AE99, Comments on Proposed 25 CFR Part 293

Dear Ms. Hart:

On behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians (the "Gun Lake Tribe"), I am writing to comment on the Department of the Interior's proposed regulation concerning the approval of tribal-state gaming compacts. For the reasons set forth below, we believe that portions of the proposed rule are not consistent with the IGRA and otherwise may lead to destabilization of compacts during the period of time between submission of compacts to the Secretary and approval.

Discussion

Proposed 25 C.F.R. § 293.16 When does an approved or considered-to-have-been-approved compact or amendment take effect

Proposed 25 C.F.R. § 293.16 states: "(a) An approved or considered-to-have-been-approved compact or amendment takes effect on the date that notice of its approval is published in the Federal Register, (b) The notice of approval must be published in the **Federal Register** within 90 days from the date the compact or amendment is received by the Office of Indian Gaming." (underline added). We disagree with this proposed provision for several reasons. First, nowhere in IGRA is effectiveness of a compact predicated on the date of the federal register notice. In fact, 25 U.S.C. § 2710(d)(8)(C) states that the compact "shall be considered to have been approved" as of the 46th day after submission if the Secretary does not approve or

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disapprove of the compact prior to that date. Thus, the regulation is contrary to IGRA and, if it results in an effective date that occurs more than 45 days after the date that the compact is submitted, the regulation, is *ultra vires*.

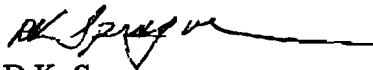
In addition to the above objection, we note that this proposed section makes effectiveness of a compact dependant on the fiat of the Departmental Secretary. This is not a requirement of IGRA and reflect this requirement.

Proposed 25 C.F.R. § 293.14. Who can withdraw a compact or amendment after it has been received by the Secretary?

This proposed section requires that the state and tribe agree to withdraw a compact or amendment in order to effectuate a withdrawal prior to approval/effectiveness. The Gun Lake Tribe supports this provision, but thinks that it should be amended to provide that any withdrawal must be in writing and executed by the Tribe and the State. This would assure the Department that any withdrawal of an executed compact is valid, and would thus add stability and predictability to the approval process.

On behalf of the Gun Lake Tribe, I thank you for your consideration of the above comments, and urge you to amend the proposed regulation accordingly.

Sincerely,



D.K. Sprague